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SB 1591, HD 1 RELATING TO ENVIRONMENTAL IMPACT STATEMENTS

Statement for
House Committee on
Judiciary
Public Hearing, 29 March 1979

By
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SB 1591, HD 1 would amend HRS 343, the State Environmental Impact Statement (EIS) Law. This statement on the bill does not reflect an institutional position of the University.

In the original version, SB 1591 represented a largely housekeeping revision of the EIS law, bringing it into conformity with the practices instituted through the Environmental Quality Commission regulations, eliminating certain inconsistencies, and clarifying a number of points. Its drafting represented the informal consensus of the representatives of a number of parties including environmental agencies, agencies with approval powers over projects, and the construction industry. As originally introduced, with the revisions incorporated in HD 1, or with one further revision, the bill should be approved for the sake of these housekeeping improvements.

One substantive amendment that would have been made by the original version of the bill has been altered in HD 1. This amendment concerns the limitations on the time during which a suit may be instituted to challenge the undertaking of a project that should have been subject to a determination whether or not preparation of an EIS is necessary, but for which no determination was made (HRS 343-(6) 7(a)). The time limit, 180 days in the present law, would have been reduced in the original version of SB 1591 to 90 days, and the commencement of the 90 day period would have been defined differently for the projects of government agency actions and private projects subject to agency approvals. In HD 1 much of the present language of the subsection has been retained, but the time limit in 120 days.

The present 180 days was considered excessively long by those concerned that a project may be long underway before a suit challenging the legality of its undertaking is instituted. We considered the 90 day limit too short if it began, as was proposed in

the original version of SB 1591, when an agency approval was granted, because there might be no general knowledge of the plans for the project until it was actually begun. The 120 days represents a satisfactory compromise.

We have one suggestion for further revision. This concerns the time limit to the processes of review, response to review comments, and acceptance of an EIS on a private project needing an agency approval. Under the present law, if an acceptance decision is not made by the approving agency within 60 days after the submission of the EIS, the EIS is to be deemed accepted. The EQC regulations allow a period of 30 days for the public review of the EIS and 14 days thereafter for the response of the applicant, and hence 16 days thereafter for the acceptance decision. There have been cases in which review comments indicated needs for revisions more extensive than the applicants could accomplish during the 14-day response period. In such a case, if the applicant and the approving agency have agreed, the practice in the past has been to allow extension of the 14-day response period and the overall 60 day period.

Because there appears to be no basis for this practice in the law, we recommended in "The Hawaii State Environmental Impact Statement System" (Env. Ctr., SR:0019, January 1978), that the law be amended so that the 60 day period for review, response, and acceptance decision, might be extended by the mutual agreement of the applicant and the agency.

The 60-day time limit was clearly established to protect private applicants for agency permit from possible dilatory tactics by the agencies. The practice of its extension by mutual agreement indicates, however, that the applicants have found the period too short in some cases. When SB 1591 was drafted, it did not seem essential that the law be amended to allow the practice to continue. However, we understand that the Attorney General's office has advised that the extensions are illegal, even if mutually agreed to.

Some objection has been raised to provision for extension by mutual agreement on the grounds that an agency may pressure an applicant to approve an extension for the convenience of the agency. I suggest, however, that the provision for extension might appropriately be made if the second sentence pertaining to the 60-day time limit were revised as follows:

The statement shall be deemed accepted if the agency fails to accept or not accept the statement within sixty days after the receipt of the statement, providing however that the sixty day period may be extended at the request of the applicant.